



In the Matter of:

RICKY D. FORREST,

ARB CASE NO. 01-090

Complainant,

ALJ CASE NO. 01-STA-43

v.

DATE: January 25, 2002

TRANSWOOD LOGISTICS, INC.,

Respondent.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

Ricky D. Forrest, *pro se*, Alvin, Texas

FINAL DECISION AND ORDER

Complainant Ricky D. Forrest filed the instant complaint with the Labor Department’s Occupational Safety and Health Administration (“OSHA”)^{2/} alleging that Respondent Transwood Logistics, Inc. (“Transwood”) constructively discharged him in violation of the employee protection provisions of the Surface Transportation Assistance Act (“STAA”), 49 U.S.C.A. §31005 (West 1997). OSHA investigated the matter and found no merit to the complaint. Forrest objected to that determination, and the matter was referred to an Administrative Law Judge (“ALJ”) for a hearing, pursuant to 29 C.F.R. §1978.105 (2000).

The STAA provides in relevant part:

(A) Prohibitions - (1) A person may not discharge an employee, . . . or discriminate against an employee regarding pay, terms, or privileges of employment, because -

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

^{2/} OSHA is the agency within the Department charged with investigating complaints that an employer has violated the STAA’s whistleblower protection provisions. 29 C.F.R. §1978.102(c) (2000).

* * *

- (B) the employee refuses to operate a vehicle because-
 - (i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or
 - (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

49 U.S.C.A. § 31105(a).

Forrest argued that he engaged in activity protected by the STAA when he refused to drive a truck in excess of ten hours without first being given the requisite eight hour break.^{3/} He also argued that he engaged in protected activity by complaining that the truck he was driving did not have a New York Highway Use Tax ("HUT") sticker. According to Forrest, because he engaged in these protected activities, Transwood created such a coercive working atmosphere that he was forced to resign.

With regard to Forrest's concerns about the HUT sticker, the ALJ determined that the HUT sticker was a tax collection matter unrelated to truck safety, and therefore did not constitute a protected complaint about a violation of a safety regulation. In addition, the ALJ held that no reasonable person could believe that the failure to obtain a HUT sticker established a real danger of accident, injury, or serious impairment to health. Thus, in the ALJ's view, Forrest's concerns about the HUT sticker simply did not constitute protected activity under the STAA.

The ALJ agreed that Forrest's refusal to drive a truck in excess of the hours permitted by regulation was a protected activity. However, the ALJ found that the dispatcher's failure to afford Forrest an eight hour break was the result of a simple miscalculation and that, once the dispatcher realized her error, she immediately apologized and allowed him to take an eight-hour break. Most significantly, the ALJ found that, to the extent that Forrest was having difficulty working for Transwood, his problems were due to an on-going pattern of problem behavior and were not occasioned by this protected activity. Moreover, the ALJ found that none of Forrest's jobsite

^{3/} 49 C.F.R. §398.6 provides that "[n]o person shall drive nor shall any motor carrier permit or require a driver employed or used by it to drive more than 10 hours in the aggregate . . . in any period of 24 consecutive hours, unless such driver be afforded eight consecutive hours rest immediately following the 10 hours aggregate driving."

conflicts rose to the level of aggravation that would support a finding of constructive discharge. Because Forrest was not discriminated against because of his protected activity, and because he was not subjected to an adverse action, the ALJ recommended that the complaint be dismissed.

The ALJ's decision is before the Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109(c)(1). Pursuant to 29 C.F.R. §1978.109(c)(2), the Board invited both parties to file briefs in support of, or in opposition to, the ALJ's recommended decision. Forrest filed a brief, but Transwood did not.

On appeal, Forrest objects to several statements or rulings made by the ALJ and alleges that they demonstrate the ALJ's predisposition to rule against him. We have reviewed the record in this case and find no basis upon which to conclude that the ALJ's statements or rulings were erroneous or the result of bias. Moreover, none of the arguments proffered by Forrest has any bearing on the dispositive issue in this case: whether Transwood constructively discharged Forrest for engaging in protected activity.

Here, the ALJ found that Transwood did not retaliate against Forrest for engaging in activity protected by the STAA. The ALJ's findings are amply supported by substantial evidence in the record. We therefore adopt and attach the ALJ's recommendation and **DENY** the complaint.^{4/}

SO ORDERED.

PAUL GREENBERG
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

^{4/} In light of the finding that Forrest was not constructively discharged, it is not necessary in this case for us to decide whether complaints about highway use tax payments may implicate truck safety. We therefore express no opinion on this aspect of the ALJ's decision.